UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

GENERAL SECURITY SERVICES CORPORATION

Employer

and

INTERNATIONAL UNION, SECURITY, POLICE & FIRE PROFESSIONALS OF AMERICA, (SPFPA) Case 9-RC-18034 [1]/

Petitioner

and

INDUSTRIAL, TECHNICAL & PROFESSIONAL EMPLOYEES UNION, AFL-CIO, AFFILIATED WITH THE OPEIU AS LOCAL 4873 [2]/

Intervenor

GENERAL SECURITY SERVICES CORPORATION

Employer

and

KENNETH RANDALL GREELY, AN INDIVIDUAL Case 9-RD-2093

Petitioner

and

INDUSTRIAL, TECHNICAL & PROFESSIONAL EMPLOYEES UNION, AFL-CIO, AFFILIATED WITH THE OPEIU AS LOCAL 4873 2/

Union

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[1]/ Although not appearing at the hearing in this matter, shortly before the hearing commenced the SPFPA filed a written request to withdraw its petition in Case 9-RC-18034 contingent upon its being permitted to intervene in Case 9-RD-2093. In the expectation that the request might be referred to her, the Hearing Officer "provisionally" allowed the SPFPA to intervene in the decertification proceeding. The matter was not referred to her nor has the withdrawal request been approved. In view of my determination in this proceeding, I find it unnecessary to rule on the motion to intervene or request to withdraw.

[2]/ The name of the incumbent union appears as corrected at the hearing.

DECISION AND ORDER

I. INTRODUCTION

The Employer is engaged in providing security services at various facilities of the United States Government throughout the country, including in the State of Ohio. The Industrial, Technical & Professional Employees Union, AFL-CIO, affiliated with the OPEIU as Local 4873, (herein referred to as the ITPEU), currently represents guards employed by the Employer in three areas of Ohio.

The Petitioner in Case 9-RC-18034, International Union, Security, Police & Fire Professionals of America, (SPFPA), seeks to represent the Employer's employees working as security guards in Cincinnati, Ohio. The Petitioner in Case 9-RD-2093, Kenneth Randall Greely, (herein referred to as Greely), seeks to decertify the ITPEU as the representative of the Employer's employees working as security guards in the Dayton and Cincinnati, Ohio areas.

The threshold issue in this case is whether the current collective-bargaining agreement between the Employer and the ITPEU serves as a contract bar to one or both petitions. [3]/ The Employer and the ITPEU contend that it does; Greely and the SPFPA contend that it does not. After carefully considering the evidence as set forth in detail below, the arguments made at the hearing, the brief filed by the SPFPA [4]/ and the appropriate precedent, I conclude that the collective-bargaining agreement serves as a bar to both petitions and I will dismiss the petitions.

II. OVERVIEW OF THE EMPLOYER'S OPERATIONS

The record reflects that the Employer is under contract to the Department of Homeland Security/Immigration, Customs and Enforcement Agency/United States Federal Protective Services to provide security services at various federal buildings in the State of Ohio. The current contract for such services was entered into on October 1, 2004 and has a 2-year initial base period, followed by three 1-year options for renewal.

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[3]/ There was some mention in the closing argument of ITPEU counsel that the ITPEU is a mixed guard/non-guard union. It is clear from the record, however, that the employees in issue in this matter are all guards.

Mixed units of guards and nonguards are never appropriate and a contract covering such a unit will not serve as a bar. *Monsanto Chemical Co.*, 108 NLRB 870 (1950); and *Corrections Corp of America*, 327 NLRB 577 (1999). However, if the *unit* is appropriate (i.e., an all guard unit) and the contract is otherwise lawful, it still serves as a bar even if the recognized union admits to membership non-guards. *Burns International Detective Agency*, 134 NLRB 451 (1962); and *Stay Security*, 311 NLRB 252 (1993). Thus, even if the ITPEU admits nonguards to membership, this does not affect my analysis pertaining to the contract bar issue herein.

[4]/ The SPFPA did not appear at the hearing, but did file a post hearing brief. No other party filed a brief.

The Department of Labor divides the State of Ohio into various wage areas which determines what wage rate a federal contractor, such as the Employer, must pay its employees. This mandate is not applicable if the contractor's employees are covered by a collective-bargaining agreement. It appears that the Employer follows the Department of Labor's division of the state in organizing its own operations. Under these divisions, the Employer currently employs guards in the Toledo, Cleveland, Youngstown, Columbus, Dayton and Cincinnati areas. The major metropolitan area designations actually include many smaller communities grouped within these delineated wage determination areas. Thus, for example, the Employer's operations in Cincinnati are considered to also include Middletown, Batavia and Hamilton, Ohio.

In carrying out its obligations under the security contract the Employer utilizes what are classified as "guard two's" who work under the supervision of sergeants, lieutenants, captains and majors. The sergeants, lieutenants, captains and majors may discipline, but not discharge, guards. It also appears that individuals in these ranks may have authority over guards at locations other than where the ranking officers are stationed. For example, a captain working out of Cincinnati was described in the record as having authority over guards in Columbus. Discharge decisions must be made by corporate personnel. Bruce Bennett is the Employer's contract manager for the State of Ohio.

There appears to be negligible permanent transfers of guards between the various areas - only one example of a transfer appears in the record. There appears to be more frequent temporary assignments of guards into the Columbus area from other areas to service the security needs of the Federal Emergency Management Agency.

III. SUMMARY OF COLLECTIVE BARGAINING HISTORY

The ITPEU is recognized by the Employer as the collective-bargaining agent for guards working in federal buildings in the Columbus, Dayton and Cincinnati areas. At one point, but no longer (as explained below) it also represented the guards in the Youngstown area. A different union represents the Toledo guards. The Cleveland guards are unrepresented.

The labor relations history of security services contractors for federal buildings in the State of Ohio is somewhat convoluted due to various changes in contractors and bargaining representatives, as well the Federal Government's former practice of letting contracts for the northern and southern halves of the state separately – a procedure no longer followed. It appears unnecessary to set forth in any great detail this history except to note that the previous division of the state, along with the Department of Labor's wage areas, may help explain the employees covered by the two collective-bargaining agreements involved in this matter and various memoranda of understanding.

The first collective-bargaining agreement between the Employer and the ITPEU was effective by its terms from October 1, 2004 through September 30, 2005. The preamble to that agreement acknowledged that the ITPEU represented "all non-

supervisory armed security force employees located in the Federal Buildings in Central and Southern, Ohio . . . ." It then referred to an attachment which may never have existed. It appears that the 2004 agreement covered the Cincinnati, Dayton and Columbus areas - which would encompass all the wage areas appearing in the record for the central and southern part of Ohio.

The collective-bargaining agreement contains a definition of seniority; establishes seniority as the method to be followed in the event of a layoff; establishes an advance date for posting of work schedules; provides a just cause standard for suspensions or discharges; sets forth a disciplinary procedure; provides a grievance procedure culminating in arbitration; establishes criteria for leaves of absence; provides for shop stewards; sets forth an allowable number of sick days; designates holidays and the method for computing holiday pay; requires the Employer to provide a certain number of uniforms; and, provides for paid jury duty.

The economics of the collective-bargaining agreement are set forth in three separate documents, each styled a Memorandum of Agreement. The memoranda each reference Columbus, Cincinnati or Dayton. They are identical except for the wage rates set forth therein - the differences apparently flowing in some measure from the Department of Labor's wage determination for those areas. These memoranda have the same effective date as the initial agreement between the Employer and the ITPEU, but they, rather than covering only 1 year, contemplate a wage schedule over 3 years.

On August 4, 2005, the Employer and the ITPEU executed a new collective-bargaining agreement, effective by its terms from August 1, 2005 through September 30, 2009. The only change made to the agreement, other than with respect to its duration, was that the preamble was changed to refer to the ITPEU as "the representative of all non-supervisory armed security force employees located in Federal Buildings in the state of Ohio . . . ." It then refers to an attachment which states:

ATTACHMENT A

Covering Security Force Employees
at the
Federal Buildings in the State of Ohio
for the following districts and surrounding areas

Cincinnati Ohio
Dayton Ohio
Columbus Ohio
Youngstown Ohio

Thus, the Employer and the ITPEU had determined to include the Youngstown guards within the coverage of the contract – the Employer apparently having recognized the ITPEU as their bargaining representative when it entered into the contract to provide security services in the State of Ohio. I note that the location of the city of Youngstown

could not be described as either in central or southern Ohio and, therefore, would not have been encompassed in the previous collective-bargaining agreement.

On July 18, 2005, a decertification petition was filed in Case 8-RD-2027 with respect to the guards in the Youngstown area. Thereafter, pursuant to a Stipulated Election Agreement, a mail ballot election was held. On September 19, 2005, a Certification of Results issued which indicated that the employees at Youngstown voted to decertify the ITPEU as their collective-bargaining representative. [5]/ Due to this election it appears that the Employer and ITPEU no longer consider the Youngstown guards as encompassed by their latest collective-bargaining agreement. The petitions in the instant matter were both filed on October 3, 2005. Thus, as of the filing of those petitions, the scope of coverage of the 2005 agreement was the same as the 2004 agreement.

IV. THE LAW AND ITS APPLICATION

The Board's contract-bar doctrine, as evolved over the years, is used by the Board to determine whether it will "entertain petitions to displace an incumbent bargaining representative in the face of an outstanding collective-bargaining agreement between the employer and the incumbent representative." *Hexton Furniture Co.*, 111 NLRB 342, 343-44 (1955). Thus, it is well established that an executed contract having a fixed term of 3 years or less is a bar to an election for the entire duration of the contract. *General Cable Corporation*, 139 NLRB 1123, 1125 (1962). Contracts having fixed terms longer than 3 years will preclude an election only for the first 3 years of the agreement. Id. The burden to establish a contract bar rests with the party asserting that a contract bar exists. *Roosevelt Memorial Park Inc.*, 187 NLRB 517, 517-18 (1970); *Bo-Low Lamp Corporation*, 111 NLRB 505, 508 (1955).

"The single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and acceptance of those terms through the parties affixing their signatures." *Seton Medical Center*, 317 NLRB 87 (1995). Generally, the Board will find a contract adequate if the following are present: (1) the contract is in writing; (2) the parties to the contract have signed the contract prior to the filing of the rival representation petition; (3) the contract contains substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; (4) the contract clearly encompasses the employees sought in the petition; and (5) the contract embraces an appropriate unit. *Appalachian Shale Products Co*., 121 NLRB 1160, 1161-1164 (1958).

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[5]/ Although the decertification vote was only alluded to in the record, I take administrative notice of the case number and details surrounding the decertification as gleaned from the records of the Agency. The Board may take administrative notice of its own files. *Lord Jim's*, 264 NLRB 1098, fn. 1 (1982). Moreover, the Board need not await a motion by a party to take administrative notice of its own documents. *Reno Hilton*, 319 NLRB 1154, 1157 fn. 16 (1995).

Here, there is no question the current collective-bargaining agreement is in writing and was executed well before either petition was filed. The SPFPA asserts that somehow the negotiation of the new contract was done in secret. The SPFPA, however, did not offer any evidence of any secret negotiations or that the signing of a new contract was in any way purposely hidden from employees. The party making such a claim bears the burden to produce evidence in support of it and the SPFPA has not done so. [6]/ See, e.g., *Aramark Sports & Entertainment Services*, 327 NLRB 47 (1998).

Although the economic aspects of the agreement are covered by memoranda rather than in the body of the agreement itself, the standard is whether "the agreement in question contains substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship." *Farrel Rochester Division of USM Corporation*, 256 NLRB 996, 999 at fn. 18 (1981). Thus, a contract was held to be a bar when the parties had come to an agreement on all matters except economic conditions and had agreed to interest arbitration on those matters. *Stur-Dee Health Products*, 248 NLRB 100 (1980). With particular applicability to the instant matter, the Board, in *Cooper Tank & Welding Corp.*, 328 NLRB 759 (1999), held that an agreement which did not contain any wage provisions in its body constituted a bar, especially due to the reference of a schedule outside the body of the contract which could provide a mechanism by which any wage increases might be determined. The same can be said for the memoranda of understanding in the instant matter. In like vein, in *Levi Straus and Co.*, 218 NLRB 625 (1975), a contract which did not contain wage rates - since wages were left to separate bargaining - was found to contain substantial terms and conditions of employment and served as a bar.

The record reflects that the contract clearly embraces the employees who are the subject of the petitions in both Cases 9-RC-18034 and 9-RD-2093. The SPFPA argues that because the Youngstown employees voted not to be represented by the ITPEU, the unit written in the current agreement is wrong. I do not find any merit to the SPFPA's argument. It appears, as noted above, that the parties do not consider the ITPEU to currently represent the Youngstown guards. Thus, the scope of the current contract is the same as the predecessor contract. The SPFPA does not offer, and I am unaware of, any precedent indicating that the fact that the Youngstown guards are no longer covered by the contract negates it as a contract bar. It is admittedly unclear whether the parties to the current contract consider their agreement a master agreement covering three separate units, or whether they view all employees organized by the ITPEU as a single unit. However, I deem it unnecessary to resolve this issue because either unit would be appropriate and when a master agreement is found to be the basic contract, with the local supplements merely serving to fill out its terms as to certain local conditions, the master agreement will constitute a bar to an election. *Appalachian Shale Products Co.*, 121 NLRB at 1164; *Pillsbury Mills*, 92 NLRB 172 (1951). Thus, employees working in each wage area could constitute an appropriate unit because of the minimal interchange between employees of the various areas, the uniqueness of their wages and the presence

[6]/ Although Greely testified that he was unaware of the existence of the new agreement prior to filing his petition, there is no evidence that its existence was in any way hidden from him.

of local supervision. Although the three wage areas combined under the core agreement apparently do not jointly comprise any administrative division of employees, an employer and union may voluntarily combine the represented locations of an employer and such combination will be considered an appropriate unit in the absence of some contravention of the dictates of the Act or absent some other compelling reason. *The Great Atlantic & Pacific Tea Co., Inc.*, 153 NLRB 1549 (1965).

The SPFPA raises the additional issue that employees were never allowed to vote on the current collective-bargaining agreement. Neither the collective-bargaining agreement itself nor the ITPEU constitution required that a ratification vote take place on the contract. Under the contract bar rule, prior ratification by the membership is only required when it is made an *express* condition precedent in the contract itself. *Appalachian Shale Products*, 121 NLRB at 1162-1163; *United Health Care Services*, 326 NLRB 1379 (1998); *Paperworkers Local 5 (International Paper*), 294 NLRB 1168 (1989).

Because the record reflects that all of the requirements for a contract bar are present, I conclude that the current agreement between the Employer and the ITPEU bars the petitions in the instant case and I will order their dismissal.

V. CONCLUSIONS AND FINDINGS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The ITPEU and the SPFPA are labor organizations within the meaning of Section 2(5) of the Act.

4. No question concerning representation exists because of a contract bar to further proceedings on the petitions underlying this matter.

VI. ORDER

IT IS HEREBY ORDERED that the petitions in this matter be, and hereby are, dismissed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EST on **November 9, 2005**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 26th day of October 2005.

/s/ Gary W. Muffley, Regional Director

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Classification Index

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